

PROSKAUER ROSE LLP
John P. Barry
Alychia L. Buchan
One Newark Center
Newark, New Jersey 07102-5211
Telephone: 973.274.3200
Fax: 973.274.3299
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----X	
BYRON HUART and KEVIN HUART,	:
	:
<i>Plaintiffs,</i>	:
	:
v.	:
	:
	:
THE GREAT ATLANTIC & PACIFIC TEA	:
COMPANY, INC., A&P, TONY ALIBRONDO,	:
JOHN BINCELLETO, JOHN DOES 1-15	:
(fictitious entities), and XYZ CORPORATIONS	:
1-5 (fictitious entities),	:
	:
<i>Defendants.</i>	:
-----X	

CIVIL ACTION NO.: 10-5437 (FSH)(PS)

**NOTICE OF MOTION
TO DISMISS THE COMPLAINT**

TO: Robert G. Devine, Esq.
Katrina D. Gibson, Esq.
White and Williams LLP
Liberty View
457 Haddonfield Rd., Suite 400
Cherry Hill, New Jersey 08002-2220
Attorney for Plaintiffs

PLEASE TAKE NOTICE that on **December 6, 2010** at **10:00 a.m.**, or as soon thereafter as counsel may be heard, the undersigned attorneys for defendant The Great Atlantic & Pacific Tea Company, Inc., and individual defendants John Bincoletto and Anthony Alibrando (collectively, "Defendants"), shall move before the Honorable Faith Hochberg, U.S.D.J., at the

United States District Court of New Jersey located at Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, for an Order, pursuant to Fed. R. Civ. P. 12(b)(6), partially dismissing Plaintiffs' Amended Complaint (Counts I through IV and Count VI) with prejudice.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, Defendants will rely on the Memorandum of Law in Support of Defendants' Partial Motion to Dismiss the Amended Complaint and the Declaration of John P. Barry, Esq., filed herewith.

PLEASE TAKE FURTHER NOTICE that a proposed form of order is submitted herewith.

Dated: November 11, 2010
Newark, New Jersey

PROSKAUER ROSE LLP

/s/ John P. Barry
John P. Barry (jbarry@proskauer.com)
Alychia L. Buchan (abuchan@proskauer.com)
PROSKAUER ROSE LLP
One Newark Center
Newark, New Jersey 07102-5211
Telephone: 973.274.3200
Fax: 973.274.3299
Attorneys for Defendant